

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Docket No.: 04-12654 RGS

FRED T. VANDAM,

Plaintiff,

vs.

DAVID M. MCSWEENEY,
TRUSTEE OF MCREALTY TRUST,
ROCKLAND LEASE FUNDING CORP.,
UNITED STATES OF AMERICA, AND
GENERAL ELECTRIC COMMERCIAL
EQUIPMENT FINANCING, a division of
GENERAL ELECTRIC CAPITAL CORP.

Defendants.

**PLAINTIFF/DEFENDANT-IN-COUNTERCLAIM, FRED T. VANDAM'S,
MOTION FOR ENTRY OF SEPARATE AND FINAL JUDGMENT**

The Plaintiff/Defendant-In-Counterclaim, Fred T. VanDam ("VanDam"), hereby moves this Honorable Court for entry of separate and final judgment on behalf of VanDam on all of his Counterclaims (Counterclaims I through V) filed by the Defendant/Plaintiff-In-Counterclaim, David M. McSweeney, Trustee of McRealty Trust ("McSweeney"). In support of this motion, VanDam states the following:

1. On or about August 16, 2005, VanDam filed a Motion for Summary Judgment seeking judgment in his favor on all Counts of McSweeney's Counterclaims. Specifically, VanDam moved for Summary Judgment as to Count I (Breach of Contract); Count II (Violation of G.L. c. 244, §§ 20 and 36); Count III (Usury); Count IV (Violation of Implied Covenant of Good Faith and Fair Dealing); and Count V (Violation of G.L. c. 93A).

2. On September 12, 2004, the Court (Stearns, J.) granted VanDam's Motion for Summary Judgment.

3. On or about February 24, 2005, VanDam filed a Motion for Leave to Make Deposit in Court and for Award of Attorneys' Fees and Costs.

4. On or about March 15, 2005, the Court (Stearns, J.) entered an Order allowing VanDam's Motion to Deposit and for Attorneys' Fees and Costs.

5. On or about May 17, 2005, a scheduling conference was held and none of the defendants disputed the order or priority of their claims in this case.¹ The only issues that remained were McSweeney's Counterclaims against VanDam. As such, the Court instructed only VanDam and McSweeney to conduct discovery in the case.

6. Since the Court has granted VanDam's Motion for Summary Judgment, there are no other claims pending against VanDam in this matter. As such, VanDam requests that the Court enter Separate and Final Judgment in his favor and award VanDam his attorneys' fees and costs in the amount of \$8,319.39² Please see the Affidavit of Kevin P. Scanlon attached hereto as Exhibit "A." For the Court's convenience, a Proposed Order is attached hereto as Exhibit "B."

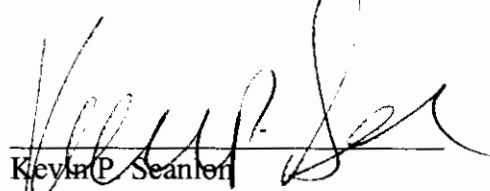
¹ The remaining defendants would still need to determine how much each is owed, but it is VanDam's understanding that defendant, Rockland Lease Funding Corp., would be entitled to the remaining proceeds as it appears they are owed in excess of the surplus funds and are ahead of the United States of America in order of priority.

² When VanDam originally filed his Motion for Summary Judgment, he requested attorneys' fees in the amount of \$15,043.42. Attorney Randy J. Spencer filed an affidavit in support of those fees and costs. The amount requested, however, was in error. The actual amount owed is \$8,319.39 and is set forth in the Affidavit of Kevin P. Scanlon attached hereto as Exhibit "A."

WHEREFORE, the plaintiff, Fred T. VanDam, respectfully requests that this Honorable Court allow his Motion for Separate and Final Judgment and requests release of \$8,319.39 and for such further and other relief as the Court deems necessary and just.

Respectfully submitted,
FRED T. VANDAM
By his attorneys,

BARRON & STADFELD P.C.

A handwritten signature in black ink, appearing to read "Kevin P. Seanle", is written over a horizontal line.

Kevin P. Seanle
BBO No. 564978
100 Cambridge Street, Suite 1310
Boston, MA 02114
(617) 723-9800

Dated: September 22, 2005

[334465]

CERTIFICATE OF SERVICE.

I, Kevin P. Scanlon, hereby certify that on September 22, 2005, I served a copy of the foregoing by mailing a copy first class mail, postage prepaid to

David M. McSweeney
105 Homes Avenue
Dorchester, MA 02010

Eric A. Howard, Esquire
Domestico, Lane & McNamara, LLP
The Meadows
161 Worcester Road
Framingham, MA 01701

Philip S. Levoff, Esquire
Law Offices of Philip S. Levoff
1172 Beacon Street, Suite 202
Newton, MA 02461-1150

Stephen J. Turanchik, Esquire
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 55
Ben Franklin Station
Washington, DC 20044

Attorney Barbara Healy Smith
Assistant U.S. Attorney
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210


Kevin P. Scanlon

[334465]

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GENERAL ELECTRIC CAPITAL CORP.

Defendants.

A

AFFIDAVIT OF KEVIN P. SCANLON

I, Kevin P. Scanlon, under oath, duly depose and state the following:

1. I am an attorney with the law firm of Barron & Stadfeld, P.C. and I am licensed to practice law in the Commonwealth of Massachusetts and the State of New Hampshire. I am in good standing in both jurisdictions.

2. Barron & Stadfeld, P.C. represents the Plaintiff, Fred T. VanDam, in the above captioned interpleader action and in defense of the Defendant, David M. McSweeney's Counterclaims.

3. As of the filing of this Affidavit and Motion for Entry of Separate and Final Judgment, Barron & Stadfeld, P.C. has billed \$8,204.00 in fees and \$115.39 in costs. A true and accurate copy of a Billing Memorandum Summary is annexed hereto which has been produced from Barron & Stadfeld, P.C.'s business records and which was created contemporaneously with the transactions in question and maintained in the regular course of business.

4. Barron & Stadfeld, P.C. has received no compensation or reimbursement for the above fees and expenses from any source.

Signed under the pains and penalties of perjury this 21st day of September, 2005.


Kevin P. Scanlon

BARRON & STADFELD, P.C.
100 CAMBRIDGE STREET-SUITE 1310
BOSTON, MA 02114
TEL: 617-723-9800
FEDERAL TAX ID 04-3031899

September 21, 2005

File Number 020973-0000

FRED T. VANDAM
C/O RANDY J. SPENCER
BARRON & STADFELD, P.C.
100 CAMBRIDGE STREET
SUITE 1310
BOSTON, MA 02114

STATEMENT OF ACCOUNT

Our records indicate that a bill remains outstanding for at least 45 days. The bill is included in the following statement as well as any other current bills.

Re: INTERPLEADER-105 HOLMES AVENUE, DORCHESTER

Bill number	38497	Date	08/16/05	7,555.25
Bill number	39145	Date	09/15/05	764.14
Total due				<u>\$8,319.39</u>

If you have any questions concerning this balance, please contact our billing office @ (617) 723-9800 ext 589 or 572. If you have recently sent your payment, please disregard this notice. We are now accepting all major credit cards. Thank you.